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EXAMINER

FISCHER, ANDREW J

| ART UNIT | PAPER NUMBER |
|----------|--------------|
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3627

DATE MAILED: 12/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/832,576

Applicant(s)

HAYES, TIMOTHY R.

Examiner

Andrew J. Fischer

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 November 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 19-21 is/are allowed.
- 6) ☒ Claim(s) 1-18 and 22-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 C.F.R. §1.114

1. A request for continued examination ("RCE") under 37 C.F.R. §1.114, including the fee set forth in 37 C.F.R. §1.17(e), was filed in this on November 16, 2004 ("First RCE"). This application was under a final rejection (the First Final Office Action, mailed August 26, 2004) and is therefore eligible for continued examination under 37 C.F.R. §1.114. Because the fee set forth in 37 C.F.R. §1.17(e) has been timely paid, the finality in the previous First Final Office Action has been withdrawn pursuant to 37 C.F.R. §1.114.

Acknowledgements

2. In accordance with the First RCE noted above, Applicant's amendment filed October 26, 2004 has been entered. Accordingly, claims 1-21 remain pending.

3. All references in this Office Action to the capitalized versions of "Applicant" refers specifically the Applicant of record. References to lower case versions of "applicant" or "applicants" refers to any or all patent "applicants." Unless expressly noted otherwise, references to "Examiner" in this Office Action refers to the Examiner of record while references to the lower case version of "examiner" refers to examiner(s) generally.

4. This Office Action is written in OACS. Because of this, the Examiner is unable to control formatting, paragraph numbering, font, spelling, line spacing, and/or other word processing issues. The Examiner sincerely apologies for these errors.

Claim Rejections - 35 USC §102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. §102 that form the basis for the rejections under this section made in this Office Action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States. . . .

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1-18 and 22-24, as understood by the Examiner, are rejected under 35

U.S.C. §102(e) as being anticipated by Slocum (U.S. 2002/103686 A1). Slocum discloses a computer based inventory method with a cumulative demand forecast for a plurality of future time windows (days); a cumulative forecasted production value (the amount of inventory the facility believes they can manufacture during that time frame; a lean buffer stock which equals the difference between the cumulative demand forecast and the cumulative forecasted production value (the amount needed to be on hand so orders are filled).

7. Claims 1-18 and 22-24, as understood by the Examiner, are rejected under 35

U.S.C. §102(b) as being clearly anticipated by Lee et. al. (U.S. 5,712,985) (“Lee”).

Claim Rejections - 35 USC §103

8. The following is a quotation of 35 U.S.C. §103(a) which forms the basis for all obviousness rejections set forth in this Office Action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1-18 and 22-24, as understood by the Examiner, are alternatively rejected under 35 U.S.C. §103(a) as being unpatentable over Slocum in view of Yang et. al. (U.S. 6,415,260 B1)(“Yang”).¹ It is the Examiner’s principle position that the claims are anticipated because of the lean buffer stock is inherent in any manufacturing facility.

However if not inherent, it is now admitted prior art that lean buffer stocks are used in manufacturing facilities as a ‘safety factor,’ extra inventory, or reserve so that the production can continue even if demand outpaces production. Moreover, Yang teaches why this reserve is necessary.

Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify Slocum as taught by Yang to include reserve as a lean buffer stock. Such a modification would have enabled the facility to better meet demand orders.

10. Claims 1-18 and 22-24, as understood by the Examiner, are also rejected under 35 U.S.C. §103(a) as being unpatentable over Yang. Yang discloses a computer based inventory method with a cumulative demand forecast for a plurality of future time windows (N days); a cumulative forecasted production value (the amount of inventory the believes they can manufacture during

¹ See MPEP §2112 expressly authorizing alternative §102/§103 rejections when the question of inherency is present in the anticipation rejection.

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that time frame; a lean buffer stock (reserve) which equal the difference between the cumulative demand forecast and the cumulative forecasted production value (the amount needed to be on hand so orders are timely filled). Yang does not directly disclose the term "lean buffer stock."

However, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify Yang to include a reserve as a lean buffer stock. Such a modification would have enabled the facility to better meet demand orders.

11. Claims 1-18 and 22-24, as understood by the Examiner, are alternatively rejected under 35 U.S.C. §103(a) as being unpatentable over Lee in view of Yang. Again, it is the Examiner's principle position that the claims are anticipated by Lee because of the lean buffer stock is inherent in any manufacturing facility.

However if not inherent, it is now admitted prior art that lean buffer stocks are used in manufacturing facilities as a 'safety factor,' extra inventory, or reserve so that the production can continue even if demand outpaces production. Moreover, Yang teaches why this reserve is necessary.

12. The Examiner concludes that Applicant has decided not to be his own lexicographer by indicating and defining claim limitations to have meanings other than their ordinary and accustomed meanings. To support this position, the Examiner relies on the following factual findings. First and as noted in the previous Office Action,² the Examiner has carefully reviewed the specification and prosecution history and can not locate any lexicographic definition(s). Second, the Examiner finds that not only has Applicant not pointed to definitional statements in

² See the Examiner's previous First Final Office Action mailed August 26, 2004, Paragraph No. 12; and the First Non-Final Office Action mailed January 20, 2004, Paragraph No. 8.

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his specification or prosecution history, Applicant has also not pointed to a term or terms in a claim with which to draw in those statements³ with the required clarity, deliberateness, and precision.⁴ Third, after receiving express notice in the previous office actions of the Examiner's position that lexicography is not invoked,⁵ Applicant has not pointed out the "supposed errors" in the Examiner's position regarding lexicography invocation in accordance with 37 C.F.R.

§1.111(b) (*i.e.* Applicant has not argued lexicography is invoked). Finally and to be sure of Applicant's intent, the Examiner also notes that Applicant has declined the Examiner's express invitation⁶ to be his own lexicographer.⁷ Accordingly and for due process purposes, the Examiner gives notice that for the remainder of the examination process (and unless expressly

³ "In order to overcome this heavy presumption in favor of the ordinary meaning of claim language, it is clear that a party wishing to use statements in the written description to confine or otherwise affect a patent's scope must, *at the very least*, point to a term or terms in the claim with which to draw in those statements. [Emphasis added.]" *Johnson Worldwide Assocs. v. Zebco Corp.*, 175 F.3d 985, 989, 50 USPQ2d 1607, 1610 (Fed. Cir. 1999).

⁴ "The patentee's lexicography must, of course, appear 'with reasonable clarity, deliberateness, and precision' before it can affect the claim." *Renishaw PLC v. Marposs Societa' per Azioni*, 158 F.3d 1243, 1249, 48 USPQ2d 1117, 1121 (Fed. Cir. 1998) citing *In re Paulsen*, 30 F.3d 1475, 1480, 31 USPQ2d 1671, 1674 (Fed. Cir. 1994).

⁵ See again First Final Office Action, Paragraph No. 12; and the First Non-Final Office Action Paragraph No. 8.

⁶ *Id.*

⁷ The Examiner's requirements on this matter were reasonable on at least two separate and independent grounds. First, the Examiner's requirements were simply an express request for clarification of how Applicant intend his claims to be interpreted so that lexicography (or even an *attempt* at lexicography) by Applicant was not inadvertently overlooked by the Examiner. Second, the requirements were reasonable in view of the USPTO's goals of compact prosecution, productivity with particular emphasis on reductions in both pendency and cycle time, and other goals as outlined in the USPTO's The 21st Century Strategic Plan, February 3, 2003 available at www.uspto.gov/web/offices/com/strat21/index.htm (last accessed December 11, 2004).

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noted otherwise by the Examiner), the heavy presumption in favor of the ordinary and accustomed meaning is not overcome; the claims therefore continue to be interpreted with their “broadest reasonable interpretation” *In re Morris*, 127 F.3d 1048, 1054, 44 USPQ2d 1023, 1027 (Fed. Cir. 1997).⁸ The Examiner continues to rely heavily and extensively on this interpretation.⁹ Unless expressly noted otherwise by the Examiner, the preceding claim interpretation principles in this paragraph apply to all examined claims currently pending.

13. To the extent that the Examiner’s interpretations are in dispute with Applicant’s interpretations, the Examiner hereby adopts the following definitions—under the broadest reasonable interpretation standard—in all his claim interpretations.¹⁰ Moreover, while the following list is provided in accordance with *In re Morris*, the definitions are a guide to claim terminology since claim terms must be interpreted in context of the surrounding claim language.¹¹ Finally, the following list is not intended to be exhaustive in any way:

⁸ See also *In re Bass*, 314 F.3d 575, 577, 65 USPQ2d 1156, 1158 (Fed. Cir. 2002) (“In examining a patent claim, the PTO must apply the broadest reasonable meaning to the claim language, taking into account any definitions presented in the specification. Words in a claim are to be given their ordinary and accustomed meaning unless the inventor chose to be his own lexicographer in the specification”) (citations omitted); *In re Etter*, 756 F.2d 852, 858, 225 USPQ 1, 5 (Fed. Cir. 1985) (en banc); and MPEP §§ 2111 and 2111.01.

⁹ See 37 C.F.R. §1.104(c)(3) which states in part: “the examiner may rely upon admissions by applicant . . . as to *any matter* affecting patentability [Emphasis added.]”

¹⁰ While most definition(s) are cited because these terms are found in the claims, the Examiner may have provided additional definition(s) to help interpret words, phrases, or concepts found in the definitions themselves or in the prior art.

¹¹ See e.g. *Brookhill-Wilk I LLC v. Intuitive Surgical Inc.*, 334 F.3d 1294, 1300, 67 USPQ2d 1132, 1137 (Fed. Cir. 2003) (abstract dictionary definitions are not alone determinative; “resort must always be made to the surrounding text of the claims in question”).

Server: “2. On the Internet or other network, a computer or program that responds to commands from a client.” Computer Dictionary, 3rd Edition, Microsoft Press, Redmond, WA, 1997.¹² **Client:** “3. On a local area network or Internet, a computer that accesses shared network resources provided by another computer (called a server).” Id. **Computer:** “Any machine that does three things: accepts structured input, processes it according to prescribed rules, and produces the results as output.” Id.

Allow “5 ... **b** : to forebear or neglect to restrain or prevent < ~ the dog to roam> ~ *vi*”
Merriam-Webster’s Collegiate Dictionary, 10th Edition, Merriam-Webster Inc., Springfield, M.A., 1997.

For “1 **a** — used as a function word to indicate purpose <a grant ~ studying medicine>”
Id.

14. Because applicants frequently misunderstand the historical order of definitions and their corresponding senses, the following excerpts from the “Explanatory Notes” in Merriam-Webster’s Collegiate Dictionary are provided:

Definitions

Division of Senses

A boldface colon is used in this dictionary to introduce a definition. . . . It is also used to separate two or more definitions of a single sense. . . . Boldface Arabic numerals separate senses of a word that has more than one sense. . . .

¹² Based upon Applicant’s disclosure, the art of record, and the knowledge of one of ordinary skill in this art as determined by the factors discussed in MPEP §2141.03 (where practical), the Examiner finds that the *Microsoft Press Computer Dictionary* is an appropriate technical dictionary known to be used by one of ordinary skill in this art. See *e.g. Altiris Inc. v. Symantec Corp.*, 318 F.3d 1363, 1373, 65 USPQ2d 1865, 1872 (Fed. Cir. 2003) where the Federal Circuit used the *Microsoft Press Computer Dictionary* (3d ed.) as “a technical dictionary” to define the term “flag.” See also *In re Barr*, 444 F.2d 588, 170 USPQ 330 (CCPA 1971)(noting that its appropriate to use technical dictionaries in order to ascertain the meaning of a term of art) and MPEP §2173.05(a) titled ‘New Terminology.’

Boldface lowercase letters separate the subsenses of a word. . . . Lightface numerals in parentheses indicate a further division of senses. . . .

Order of Senses

The order of senses within an entry is historical: the sense known to have been first used in English is entered first. This is not to be taken to mean, however, that each sense of a multisense word developed from the immediately preceding sense. It is altogether possible that sense 1 of a word has given rise to sense 2 and sense 2 to sense 3, but frequently sense 2 and sense 3 may have risen independently of one another from sense 1.

When a number sense is further subdivided into lettered subsenses, the include of particular subsenses with a sense is based upon their semantic relationship to one another, but their order is likewise historical: subsense 1a is earlier than subsense 1b, 1b is earlier than 1c, and so forth. Divisions of subsenses indicated by lightface numerals in parentheses are also in historical order with respect to one another. Subsenses may be out of historical order, however, with respect to the broader numbered senses. Merriam-Webster's Collegiate Dictionary, pp 19a-20a.

15. Additionally, the Examiner notes that “the PTO and the CCPA acknowledged product-by-process claims as an exception to the general rule requiring claims to define products in terms of structural characteristics.” *Atlantic Thermoplastics Co. v. Faytex Corp.*, 970 F.2d 834, 845, 23 USPQ2d 1481, 1490 (Fed. Cir. 1992) (hereinafter “*Atlantic Thermoplastics v. Faytex I*”). Furthermore, the Federal Circuit “acknowledges that it has in effect recognized . . . product-by-process claims as exceptional.” *Atlantic Thermoplastics v. Faytex I*, 970 F.2d at 847, 23 USPQ2d at 1491.

Because of this exceptional status, the Examiner has carefully reviewed the claims and it is the Examiner's position that claims 1-18 and 22-24 *do not* contain any product-by-process limitations whether in a conventional format or otherwise. If Applicant disagrees with the Examiner, the Examiner respectfully requests Applicant in his next response to expressly point out any product-by-process claim(s) and their limitations so that they may be afforded their exceptional status and treated accordingly. Applicant is also reminded that “even though

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product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself.” *In re Thorpe*, 777 F.2d 695, 697, 227 USPQ 964, 966 (Fed. Cir. 1985) (citations omitted).¹³ Failure by Applicant in his next response to also address this issue in accordance with 37 C.F.R. §1.111(b) or to be non-responsive to this issue entirely will be considered intent by Applicant *not* to recite any product-by-process limitations.

Allowable Subject Matter

Claims 19-21 are allowed.

Response to Arguments

16. Applicant’s arguments filed October 26, 2004 have been fully considered but they are not persuasive.

Lean Buffer Stock

17. Regarding “lean buffer stock,” Applicant argues that the Examiner’s interpretation is “mistakenly using the phrase ‘lean buffer stock’ in claim 1 to refer to conventional safety stock, which Applicant acknowledges is well-known in the field of inventory management to protect against uncertainty in forecasted demand”¹⁴ Applicant adds that claim 1’s “lean buffer

¹³ See also MPEP §2113.

¹⁴ Applicant’s “Remarks” filed October 26, Page 16, Last ¶, ~ lines 5-9.

stock” is to ‘allows manufacture to produce a substantially constant amount of the product during each of the future time windows within the future planning horizon.’”¹⁵

18. While Applicant’s point is well taken, the term “allows” is not sufficient to overcome the Examiner’s interpretation. For example, suppose an applicant claimed a computer system that allows a user print a page. This claim would be anticipated by all computers except computers that prevent a user from printing a page. Therefore even not directly disclosed, the Examiner’s computer here at the USPTO clearly “allows” printing since it does nothing to prevent printing. Likewise, the “lean buffer stock” as claimed by Applicant may be interpreted by the Examiner to mean a ‘conventional safety stock’ since a conventional safety stock “allows” a manufacture to produce a substantially constant amount of the product during each of the future time windows within the future planning horizon. In other words, a conventional safety stock in no way prevents a manufacture to produce a substantially constant amount of the product during each of the future time windows within the future planning horizon.

19. Applicant is advised that there are three (3) to overcome the Examiner’s interpretation. First, Applicant could further amend the claim to more precisely define “lean buffer stock” within the claim. If this avenue is chosen, Applicant might consider removing “allows” and replacing it with more precise language such as “lean buffer stock is”

20. Second Applicant could use the statutorily authorized claiming scheme of 35 U.S.C. §112 6th paragraph. At this time, because “means for” is not present in the claims, Applicant has not overcome the presumption that 35 U.S.C. §112 6th paragraph is *not* invoked. If this avenue is ultimately chosen, Applicant is reminded that not only must his specification provide proper

¹⁵ Id., Pages 16-17.

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antecedent basis for the claimed subject matter according to 37 C.F.R. §1.75(d)(1), MPEP §608.01(o), and MPEP §2181; Applicant's specification must also clearly link and associate the claimed function to corresponding structure found in the specification.

21. The third and final avenue for overcoming the Examiner's interpretation is lexicography. However at this time and as noted repeatedly by the Examiner in this Office Action and in previous office actions, the objective evidence in this application indicates that Applicant has intended *not* to be his own lexicographer.

22. Therefore, using the Examiner's interpretation of "lean buffer stock" as articulated in the previous First Final Office Action in combination with the broad term "allowing," Applicant's remaining arguments pertaining to Slocum are equally unpersuasive.

Official Notice

23. Since Applicant did not seasonably traverse the Official Notice statement(s) as stated in the previous First Final Office Action (Paragraph No. 10), the Official Notice statement(s) are taken to be admitted prior art. See MPEP §2144.03.

Conclusion

24. Additional references considered pertinent to Applicant's disclosure are listed on form PTO-892.

25. The following two (2) citations to the Manual of Patent Examining Procedure ("MPEP") apply to this Office Action: MPEP citations to Chapters 100, 200, 500, 600, 700, 1000, 1100, 1300, 1400, 1500, 1700, 1800, 2000, 2100, 2200, 2500, 2600, and 2700 are from the MPEP 8th

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Edition, Rev. 2, May 2004. All remaining MPEP citations are from MPEP 8th Edition, August 2001.

26. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

27. In accordance with *In re Lee*, 277 F.3d 1338, 1344-45, 61 USPQ2d 1430, 1434-35 (Fed. Cir. 2002), the Examiner finds that Hirschey et. al.'s Managerial Economics, 8th Ed. is additional evidence of what is basic knowledge or common sense to one of ordinary skill in this art. The reference is cited in its entirety. Managerial Economics provides a basic foundation for understanding economic theory and analysis and its application to individuals, households, firms, nonprofit organizations, and government entities. Because the reference is an economic textbook directed towards students, because of the reference's basic content (which is self-evident upon examination of the reference) and after further review of the entire record including the specification and prior art now of record in conjunction with the factors as discussed in MPEP §2141.03 (where practical), the Examiner finds that the Managerial Economics is primarily directed towards those of low skill in this art. Because the reference is directed towards those of low skill in this art, the Examiner finds that one of ordinary skill in this art must—at the very least—be aware of and understand the knowledge and information contained within the reference. While the Examiner recognizes that Managerial Economics contains some complex

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economical concepts with sometimes difficult mathematical constructs, such concepts and constructs do not negate the Examiner's conclusion that such concepts, constructs, and other content within Managerial Economics is well within the knowledge of one of ordinary skill in this art.

28. Also in accordance with *In re Lee*, 277 F.3d at 1344-45, 61 USPQ2d at 1434-35, the Examiner finds that the reference Introduction to Financial Accounting, Revised 3rd Ed. by Charles T. Horngren et. al. is additional evidence of what is basic knowledge or common sense to one of ordinary skill in this art. Horngren describes basic financial accounting practices. The reference is cited in its entirety. Moreover, because of the reference's basic content, because the reference is a textbook for introductory accounting course that presupposes no prior knowledge of accounting, and after further review of the entire record including the prior art now of record in conjunction with the factors as discussed in MPEP §2141.03 (where practical), the Examiner finds that Horngren is primarily directed towards those of low skill in this art. Because Horngren is directed towards those of low skill in this art, the Examiner finds that one of ordinary skill in this art must—at the very least—be aware of and understand the knowledge and information contained within Horngren.

29. In accordance with the USPTO's goals of customer service, compact prosecution, and reduction of cycle time, the Examiner has made every effort to clarify his position regarding claim interpretation and any rejections or objections in this application. Furthermore, the Examiner has again provided Applicants with notice—for due process purposes—of his position regarding his factual determinations and legal conclusions. The Examiner notes and thanks Applicant for his "Remarks" (filed on October 26, 2004 and beginning on page 15) traversing the

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Examiner's positions on various points. If Applicant disagrees with any additional factual determination or legal conclusion made by the Examiner in this Office Action whether expressly stated or implied,¹⁶ the Examiner respectfully reminds Applicant to properly traverse the Examiner's position(s) in accordance with 37 C.F.R. §1.111(b) in his next properly filed response. By addressing these issues now, matters where the Examiner and Applicant agree can be eliminated allowing the Examiner and Applicant to focus on areas of disagreement (if any) with the goal towards allowance in the shortest possible time. If Applicant has any questions regarding the Examiner's positions or has other questions regarding this communication or even previous communications, Applicant is strongly encouraged to contact Examiner Andrew J. Fischer whose telephone number is (703) 305-0292. If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's immediate supervisor, Robert Olszewski, can be reached at (703) 308-5183. The fax number for facsimile responses is now (703) 872-9306.



Andrew J. Fischer
Primary Examiner
Art Unit 3627

AJF

December 11, 2004

¹⁶ *E.g.*, if the Examiner rejected a claim under §103 with two references, although not directly stated, it is the Examiner's implied position that the references are analogous art.